

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 PATRICIA BROYLES,

11 No. 07-5305 MMC

12 Plaintiff,

13 v.

14 **ORDER DENYING PLAINTIFF'S MOTION
14 FOR DE NOVO STANDARD OF REVIEW;
15 VACATING HEARING**15 A.U.L. CORPORATION LONG-TERM
16 DISABILITY INSURANCE PLAN,

17 Defendant.

18 /

19 Before the Court is plaintiff's "Motion for De Novo Standard of Review," filed
20 June 27, 2008, by which plaintiff seeks an order that the Court will review de novo
21 defendant's decision to terminate plaintiff's long-term disability benefits. Defendant has
22 filed opposition, to which plaintiff has replied. Having considered the papers filed in support
23 of and in opposition to the motion, the Court finds the matter appropriate for resolution
24 without oral argument, hereby VACATES the August 1, 2008 hearing on the matter,¹ and
rules as follows.

25 Where, as here, an employee benefit plan is governed by the Employee Retirement
26 Income Security Act of 1974 ("ERISA"), the plan administrator's decision to deny benefits

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28 ¹ The parties' stipulated request to continue the August 1, 2008 hearing, filed July 23, 2008, is hereby denied as moot.

1 “is to be reviewed under a de novo standard unless the benefit plan gives the administrator
 2 . . . discretionary authority to determine eligibility for benefits or to construe the terms of the
 3 plan.” Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). Where an
 4 ERISA plan unambiguously confers discretionary authority on the plan administrator, a
 5 denial of benefits under the plan is reviewed for abuse of discretion. See Abatie v. Alta
 6 Health Life Ins. Co., 458 F.3d 955, 963 (9th Cir. 2006) (en banc) (citations omitted).

7 The parties here do not dispute that the language of the plan at issue confers
 8 discretion on the plan administrator. (See Pl.’s Mot. at 2:8-12, 5:6-8; Def.’s Opp’n at 9:7-
 9 10.) The plan at issue provides, in relevant part: “Except for those functions which the
 10 Group Policy reserves to the Policyowner or Employer, we [the plan administrator] have full
 11 and exclusive authority to control and manage the Group Policy, to administer claims, and
 12 to interpret the Group Policy and resolve all questions arising in the administration,
 13 interpretation, and application of the Group Policy.” (See Administrative Record (“AR”) at
 14 STND1149-00007.) This language unambiguously confers discretion on the administrator.
 15 See Bendixen v. Standard Ins. Co., 185 F.3d 939, 943 and n.1 (9th Cir. 1999).
 16 Consequently, the plan administrator’s benefit decision under the plan at issue will be
 17 reviewed for abuse of discretion. See Abatie, 458 F.3d at 963.

18 Contrary to plaintiff’s argument, the existence of a structural conflict of interest does
 19 not raise the standard to de novo review; rather, the standard of review remains deferential,
 20 see Metropolitan Life Ins. Co. v. Glenn, 128 S. Ct. 2343, 2350 (2008), and the structural
 21 conflict is considered as a “factor” to be “taken into account” along with any other relevant
 22 factors, see id. at 2351; see also Abatie, 458 F.3d at 967 (holding evidence of structural
 23 conflict of interest is weighed as part of abuse of discretion review). Accordingly, the Court
 24 will take any evidence of such structural conflict of interest into consideration when
 25 conducting a review for abuse of discretion.

26 Further, the “procedural irregularities” cited by plaintiff, (see Pl.’s Reply at 2:25-26),
 27 are not “so substantial as to alter the standard of review.” See Abatie, 458 F.3d at 971
 28 (distinguishing Blau v. Del Monte Corp., 748 F.2d 1348 (9th Cir. 1984), wherein plan

1 administrator “kept the policy details secret from the employees, offered them no claims
2 procedure, [] did not provide them in writing the relevant plan information,” and, “in other
3 words, . . . failed to comply with virtually every applicable mandate of ERISA”). Similarly,
4 plaintiff fails to identify the type of “wholesale and flagrant violations of . . . procedural
5 requirements” that are deemed to constitute a failure to exercise discretion. Cf. Abatie, 458
6 F.3d at 971-72 (holding “[benefits] decisions taken in wholesale violation of ERISA
7 procedures do not fall within an administrator’s discretionary authority”). Consequently, the
8 “procedural irregularities” cited by plaintiff will be considered as a factor in the Court’s
9 review of the denial under the abuse of discretion standard. See *id.* at 972.

10 Lastly, the standard of review is not altered by the California Department of
11 Insurance's issuance, in 2004, of a Notice by which the California Insurance Commissioner
12 withdrew approval of various policy forms based on their inclusion of a discretionary
13 clause.² As plaintiff acknowledges, the Notice does not apply retroactively. See Saffon v.
14 Wells Fargo & Co. Long Term Disability Plan, 522 F.3d 863, 867 (9th Cir. 2008) (holding
15 California law does not permit Insurance Commissioner to retroactively "nullify an ERISA
16 plan's grant of discretionary authority"). Contrary to plaintiff's argument, however, a "new
17 contract" was not formed when plaintiff obtained coverage under the plan in 2005. Rather,
18 plaintiff's enrollment in the plan made her a beneficiary of the contract between plaintiff's
19 employer and Standard Insurance Company, which contract became effective on
20 January 1, 2000. (See AR at STND1149-00030.) Plaintiff cites no authority, and the Court
21 has located none, for the proposition that the addition of new insureds under an ERISA
22 plan is the functional equivalent of the formation of a new contract.

CONCLUSION

24 Accordingly, for the reasons set forth above, plaintiff's motion is hereby DENIED.
25 The Court will review the denial of plaintiff's claim for disability benefits for abuse of

27 ² The Court hereby grants plaintiff's request for judicial notice of the "Notice to
28 Withdraw Approval and Order for Information" issued February 27, 2004 by the California
Department of Insurance. (See Pl.'s Req. for Judicial Notice Ex. A.)

1 discretion, taking into consideration any evidence of conflict of interest and procedural
2 irregularities.

3 **IT IS SO ORDERED.**

4 Dated: July 28, 2008
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MALEN M. CHESNEY
United States District Judge